

SERVICE DATE – MARCH 4, 2013

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 6 (Sub-No. 486X)

BNSF RAILWAY COMPANY—ABANDONMENT
EXEMPTION—IN FULTON COUNTY, ILL.

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE

Decided: March 1, 2013

BNSF Railway Company (BNSF) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon 14.5 miles of rail line between milepost 52.2 in Farmington and milepost 66.7 in Dunfermline, in Fulton County, Ill. Notice of the exemption was served and published in the Federal Register on January 24, 2013 (78 Fed. Reg. 5,244).

The exemption was scheduled to become effective on February 23, 2013, but a formal expression of intent to file an offer of financial assistance (OFA) was timely filed by Hitchcock Scrap Yard, Inc. (HSY), to purchase all or a portion of the line, which has the effect of automatically staying the effective date of the exemption until March 5, 2013.¹ In the filing, HSY requests that BNSF provide (1) the information required under 49 C.F.R. § 1152.27(a), including the minimum purchase price to acquire the line, and (2) all data necessary to determine the estimate of the net liquidation value of the line, together with supporting data reflecting available real estate appraisals, assessments of the quality and the quantity of track material on the line, and the removal cost estimate used to obtain the net liquidation value. HSY also requests that the 30-day time period for filing an OFA² be tolled for an additional 30 days in order to allow HSY an adequate opportunity to review and analyze BNSF's information, and to submit its OFA. BNSF does not oppose HSY's request. Accordingly, the request for an extension of the OFA filing deadline will be granted.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) in this proceeding on January 29, 2013. In the EA, OEA states that BNSF submitted an historic report and served it on the Illinois Historic Preservation Agency (SHPO) for its review and comment, pursuant to 49 C.F.R. § 1105.8(c). The report indicated that the line

¹ See 49 C.F.R. § 1152.27(c)(2)(i).

² Under 49 C.F.R. § 1152.27(c)(2)(ii)(B), OFAs are due 30 days after publication of the notice of exemption in the Federal Register.

contains two bridges, located at mileposts 52.81 and 52.86, that are 50 years old or older. In a letter dated October 26, 2012, the SHPO stated that it provided an eligibility and effect determination in November 2005, and included a copy and sample preservation covenant as part of its review concerning the proposed abandonment. The SHPO's 2005 determination concluded that the bridge at milepost 52.86 was eligible for listing in the National Register of Historic Places (National Register), and that the proposed abandonment would have no adverse effect on that bridge, providing certain stipulations were set forth in a preservation covenant. OEA adds that, because the SHPO's 2005 determination makes no reference to any other structures on the line, it is unclear as to the eligibility of other potential historic resources and the effect that the proposed abandonment and salvage operations would have on such resources, including the bridge at milepost 52.81. OEA states that BNSF has indicated that, if abandonment authority is granted, it would remove both bridges. Further, OEA states that by telephone conversation with BNSF on January 17, 2013, BNSF stated that no preservation covenant (either existing or proposed) is in place, and that it would retain the bridges only if a public use agreement is reached.

OEA states that due to the above-noted potential presence of historic resources, it is recommending that a condition be imposed requiring BNSF to retain its interest in and take no steps to alter the historic integrity of all historic properties, including sites, buildings, structures, and objects within the project right-of-way that are eligible for listing or listed in the National Register until completion of the Section 106 process of the National Historic Preservation Act (NHPA), 16 U.S.C. § 470f.

Comments on the EA were due February 13, 2013. OEA states in its final EA that no comments were received. OEA continues to recommend that the Section 106 historic preservation condition be imposed upon any decision granting abandonment authority. Accordingly, the condition recommended by OEA will be imposed. Based on OEA's recommendation, the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

In the EA, OEA concluded that the right-of-way may be suitable for other public use following abandonment and salvage of the line. On January 23, 2013, Canton Park District of Canton, Ill. (Canton Park) filed a request for the issuance of a notice of interim trail use (NITU) and rail banking under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29, and for a public use condition under 49 U.S.C. § 10905, in order to negotiate with BNSF for acquisition of the right-of-way for use as a trail. By response filed on January 24, 2013, BNSF has indicated its willingness to negotiate with Canton Park. Pursuant to 49 C.F.R. § 1152.29, Canton Park has submitted a statement of its willingness to assume financial responsibility for the right-of-way, and has acknowledged that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. § 10905. See Rail Abans.—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 609 (1986). Under § 10905, the Board may prohibit the disposal

of rail properties that are proposed to be abandoned and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment. To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. 49 C.F.R. § 1152.28(a)(2).

Canton Park has satisfied the requirements for both a public use condition and a NITU and, therefore, imposition of both would be appropriate commencing with the effective date of the exemption. However, an OFA takes priority over any requests for a NITU or for a public use condition. Therefore, the issuance and effectiveness of a NITU and a public use condition will be delayed until the OFA process has been completed. If agreement is reached on the sale or subsidy of the line, public use and trail use conditions would be unnecessary and unavailable. If no agreement is reached on the OFA, an appropriate decision and notice of interim trail use will be issued addressing these requests.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the exemption of the abandonment of the rail line described above is subject to the condition that BNSF retain its interest in and take no steps to alter the historic integrity of all historic properties, including sites, buildings, structures, and objects within the project right-of-way, that are eligible for listing or listed in the National Register until completion of the Section 106 process; that BNSF report back to OEA regarding any consultations with the SHPO and the public; and that BNSF not file its consummation notice or initiate salvage activities related to abandonment (including removal of tracks and ties) until completion of the Section 106 process and removal of this condition by the Board.
3. The requests for issuance of a notice of interim trail use and for issuance of a public use condition are held in abeyance pending completion of the OFA process.
4. If the OFA process terminates, a decision and notice effective on its service date will be issued to impose the notice of interim trail use and the public use condition.
5. BNSF is directed to provide HSY with the requested information to enable HSY to file an OFA. The deadline for HSY to file its OFA is extended to March 25, 2013.
6. The effective date of the exemption is postponed until April 4, 2013.
7. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.